



SENATE COMMITTEE on CRIMINAL JUSTICE

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512/463-0345

RD-399

June 4, 1992

The Honorable Dan Morales
Attorney General
Price Daniel Building
Opinion Division
P.O. Box 12548
Austin, Texas 78711-2548

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Opinion Committee

Dear General Morales:

During the last legislative session, I sponsored House Bill 9, which made significant changes to the law affecting punishment for capital offenses. During conference committee, an amendment to the bill was added (Section 14), stating as follows:

(a) The state may not receive from another state for purposes of treatment, supervision, or rehabilitation a person released on probation, parole, or mandatory supervision following conviction of an offense that is substantially similar to an offense defined as a capital felony under the Penal Code.

(b) This article does not affect powers and duties relating to a person currently accused of an offense.

Since passage of the legislation, I have been contacted by the Chair of the Parole and Probation Compact Administrators' Association, who contends that this provision is in direct conflict with provisions of the Interstate Compact for Supervision of Parolees and Probationers. Texas is a member of that Compact. That group further argues that the statute is in direct conflict with federal law, because Congress consented to the passage of the Interstate Compact.

In passing this legislation, it certainly was not the intent of the legislature to renounce Texas' participation in the Interstate Parole Compact. Indeed, that would have been foolish, as Texas exports significantly more inmates through application of the Compact than it brings in to the state. Our plan was simply to exclude capital murderers from being transferred to Texas.

ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY

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The Division of Pardons and Paroles does not know how to handle this issue, because the new Texas law tells the agency one thing while the Compact, which is incorporated into state law and enforceable in federal court, says another. The agency feels that it will be subject to challenge regardless of what it does. At the same time, various groups are considering legal action.

I need a written opinion from you with regard to this situation. Are the statutes truly in conflict? If so, must the new law be repealed? Can it simply be considered unenforceable, as there was never a formal renunciation of our membership in the Interstate Compact? If it is unenforceable, can the agency adopt rules that make clear it will follow the dictates of the Compact? If the legislature must take action with regard to this issue, how soon must that be done?

I am enclosing copies of correspondence and articles about this issue. Please do not hesitate to contact me if you have any questions about this matter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted B. Lyon", with a long horizontal flourish extending to the right.

Ted B. Lyon
State Senator

Enclosures